

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 BRIAN S. TURNER
Deputy Attorney General
4 State Bar No. 108991
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-260**

ACCUSATION

13 **MARK RONALD BROWN**
14 2105 Heavenly View Trail
Reno, Nevada 89523

15 **Registered Nurse License No. 645272**

16 Respondent.

17
18 Louise R. Bailey, M.Ed., RN (Complainant) alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Interim
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 2. On or about September 22, 2004, the Board issued Registered Nurse License Number
24 645272 to Mark Ronald Brown ("Respondent"). The license was in full force and effect at all
25 times relevant to the charges brought herein and will expire on November 30, 2011, unless
26 renewed.

27 ///

28 ///

JURISDICTION

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

1 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
2 himself or herself, any other person, or the public or to the extent that such use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her license."

4 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
5 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
6 section.

7 COST RECOVERY

8 7. Code section 125.3 provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 DRUGS

13 8. "Morphine" is a Schedule II controlled substance as designated by Health and Safety
14 Code section 11055(b)(1)(M).

15 9. "Fentanyl" is a Schedule II controlled substance as designated by Health and Safety
16 Code section 11055(c)(8).

17 10. "Demerol," a brand of meperidine hydrochloride, a derivative of pethidine, is a
18 Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(17).

19 11. "Versed" is a brand name for Midazolam Hydrochloride and a Schedule IV controlled
20 substance as designated by Health and Safety Code section 11057, subdivision (d)(21).

21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of a Crime)

23 12. Respondent is subject to discipline under Code section 2761(f), in that on or about
24 August 3, 2010, in the case of *People v. Mark Ronald Brown*, (Super. Ct. Nevada County, Case
25 No.T 09/1020F), Respondent was convicted by the Court on his plea of no contest of violating
26 Health and Safety Code section 11377 (a) (possession of a controlled substance). The
27 circumstances of the crime was that between September 1, 2007, and November 22, 2007,
28 Respondent possessed Fentanyl and Morphine).

1 Patient B:

2 d. On or about October 25, 2007, at 1255 hours, Respondent signed out one (1) 100
3 mcg. vial of Fentanyl. At 1255 hours, 1305 hours, and 1315 hours, Respondent charted the
4 administration of 25 mg. of Fentanyl each time, but failed to account for the disposition of the
5 remaining 25 mcg. of Fentanyl in any hospital or patient record.

6 Patient C:

7 e. On or about October 25, 2007, at 1211 hours, Respondent signed out one (1) 100
8 mcg. vial of Fentanyl. At 1210 hours and 1230 hours, Respondent charted the administration of
9 25 mg. of Fentanyl each time, but failed to account for the disposition of the remaining 50 mcg.
10 of Fentanyl in any hospital or patient record.

11 Patient E:

12 f. On or about October 31, 2007, at 1022 hours, Respondent signed out one (1) Ml vial
13 of Morphine (10 mgs.). Respondent charted the administration of 2 mgs. of Morphine at 0938
14 hours, 4 mgs. at 0948 hours, 4 mgs. at 0958 hours, and 2 mgs. at 1018 hours, totaling 12 mgs. of
15 Morphine, when in fact, Respondent only signed out 10 mgs. of Morphine. In addition, the
16 Morphine was administered between 4 and 44 minutes prior to signing it out.

17 g. On or about October 31, 2007, at 1042 hours, Respondent signed out one (1) Ml vial
18 of Morphine (10 mgs.). Respondent charted wasting 8 mgs. at 1103 hours, but failed to account
19 for the disposition of the remaining 2 mgs. in any hospital or patient record.

20 Patient J:

21 h. On or about November 9, 2007, at 0955 hours, Respondent signed out two (2) 5 mg.
22 vials of Versed. At 1035 hours, Respondent charted the administration of 3 mg. of Versed; at
23 1040 hours, Respondent charted the administration of 4 mg. of Versed; and at 1045 hours,
24 Respondent charted the administration of 2 mg. of Versed. Respondent failed to account for the
25 remaining 1 mg. of Versed in any hospital or patient record.

26 Patient K:

27 i. On or about November 9, 2007, at 1154 hours, Respondent signed out two (2) 5 mg.
28 vials of Versed. At 1217 hours, Respondent charted the administration of 2 mg. of Versed and at

1 1222 hours and 1227 hours, Respondent charted the administration of 3 mg. of Versed each time,
2 but failed to account for the remaining 2 mg. of Versed in any hospital or patient record.

3 j. On or about November 9, 2007, at 1246 hours, Respondent signed out one (1) 5 mg.
4 vial of Versed. At 1242 hours and 1247 hours, Respondent charted the administration of 2 mg. of
5 Versed each time; but failed to account for the remaining 1 mg. of Versed in any hospital or
6 patient record.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Obtained, Possessed, and Self-Administered Controlled Substances)

9 15. Respondent is subject to discipline under Code section 2761(a), on the grounds of
10 unprofessional conduct as defined in Code section 2762(a), in that between September 2007 and
11 November 21, 2007, while employed as a registered nurse at Tahoe Forest Hospital, located in
12 Truckee, California, Respondent did the following:

13 a. Respondent obtained Fentanyl, Demerol, Morphine, and Versed, controlled
14 substances, by fraud, deceit, misrepresentation or subterfuge or by the concealment of a material
15 fact in violation of Health and Safety Code section 11173(a) when, while on duty, Respondent
16 signed out the medication for the administration to various patients, but took it for his own
17 personal use. Respondent would inject himself with the medication, then refill the vial with
18 saline.

19 b. Respondent possessed Fentanyl, Demerol, Morphine, and Versed, controlled
20 substances, in violation of Code section 4060, in that he did not have a prescription for those
21 controlled substances.

22 c. Respondent self-administered Fentanyl, Demerol, Morphine, and Versed, controlled
23 substances, without direction to do so from a licensed physician and surgeon, dentist or podiatrist.

24 FIFTH CAUSE FOR DISCIPLINE

25 (Use of Controlled Substances)

26 16. Respondent is subject to discipline under Code section 2761(a), on the grounds of
27 unprofessional conduct as defined in Code section 2762(b), in that between September 2007 and
28 November 21, 2007, while on duty as a registered nurse at Tahoe Forest Hospital, located in

1 Truckee, California, Respondent used controlled substances to an extent or in a manner dangerous
2 or injurious to himself, any other person, or the public or to the extent that such use impaired his
3 ability to conduct with safety to the public the practice authorized by his license.

4 FACTORS IN AGGRAVATION

5 17. In order to determine the degree of penalty to be imposed, if any, complainant alleges
6 the following as factors in aggravation:

7 a. On or about August 25, 2004, a Stipulated Settlement and Disciplinary Order
8 between the Board and Respondent became effective. A copy of the signed Stipulation and Order
9 is attached as Exhibit 1. The Board's Order issued then revoked Respondent's nursing license.
10 The revocation was stayed, and Respondent was placed on probation for three (3) years.
11 Respondent stipulated to the following facts:

12 i. In or about 1996, in the case of *People v. Mark R. Brown*, (Dist. Ct. Alaska,
13 1996, No. 3ANS 96-1263 CR), Respondent was convicted by the Court on his plea of guilty of
14 violating AS28.35.030(a) (driving while intoxicated). The circumstances of the crime were that
15 on or about December 21, 1995, at or near Girdwood, Alaska, Respondent unlawfully operated a
16 motor vehicle while under the influence of intoxicating liquor or a controlled substance.
17 Respondent's blood alcohol level was 0.248%, and he tested positive for Marijuana.

18 ii. In or about 1990, in Lincoln County, Montana, Respondent possessed
19 Marijuana.

20 iii. In or about October 1999, while employed and on duty at Maui Memorial
21 Medical Center in Hawaii, Respondent self-administered Morphine and Demerol he diverted
22 from the hospital.

23 b. On or about July 16, 2009, Respondent voluntarily entered an Agreement for
24 Probation for his Nevada registered nurse license. The signed and approved Agreement for
25 Probation is attached as Exhibit 2. In the Agreement, Respondent admitted he had three drug
26 and/or alcohol related convictions from 1987 through 2000, admitted his California license had
27 been placed on probation based on criminal convictions and voluntarily surrendered his Hawaii
28 registered nurse license prior to a petition for disciplinary action being filed on May 5, 2006.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 645272, issued to Mark Ronald Brown;

2.. Ordering Mark Ronald Brown to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/28/10

for *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2009103219
10557178.doc

EXHIBIT 1

Mark Brown Accusation

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MARK RONALD BROWN
P.O. Box 911
Haiku, Hawaii 96708

Case No. 2004-232

OAH No. N 2004030548

Respondent

RN 645272

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on August 25, 2004.

IT IS SO ORDERED July 26, 2004.

Sandra L. Erickson

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Rodriguez

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHAEL J. FIELDING, State Bar No. 068612
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 445-2271
Facsimile: (916) 327-8643
6
7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues Against:

Case No. 2004-232

11 MARK RONALD BROWN
12 P.O. Box 911
13 Haiku, Hawaii 96708

OAH No. N 2004 030548

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Respondent.

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled proceedings that the following matters are true:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
20 the Board of Registered Nursing. She brought this action solely in her official capacity and is
21 represented in this matter by Bill Lockyer, Attorney General of the State of California, by
22 Michael J. Fielding, Deputy Attorney General.

23 2. Mark Ronald Brown (Respondent) is representing himself in this
24 proceeding and has chosen not to exercise his right to be represented by counsel.

25 3. On or about August 22, 2002, the Board received an Application for RN
26 Licensure by Endorsement from Mark Ronald Brown ("Respondent"). The Board denied the
27 application on January 10, 2003. On or about February 24, 2003, Respondent sent the Board a
28 written request for an appeal of the Board's denial of his license application.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION

4. Statement of Issues No. 2004-232 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on March 12, 2004. A copy of Statement of Issues No. 2004-232 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 2004-232. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2004-232.

9. Respondent agrees that his Registered Nurse License application is subject to denial and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

///

///

///

1

2

①

7

1

2

4

:

1 **Severability Clause.** Each condition of probation contained herein is a separate
2 and distinct condition. If any condition of this Order, or any application thereof, is declared
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
5 and enforceable to the fullest extent permitted by law.

6 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
7 A full and detailed account of any and all violations of law shall be reported by Respondent to
8 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
9 compliance with this condition, Respondent shall submit completed fingerprint forms and
10 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
11 as part of the licensure application process.

12 **Criminal Court Orders:** If Respondent is under criminal court orders, including
13 probation or parole, and the order is violated, this shall be deemed a violation of these probation
14 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15 2. **Comply with the Board's Probation Program.** Respondent shall fully
16 comply with the conditions of the Probation Program established by the Board and cooperate
17 with representatives of the Board in its monitoring and investigation of the Respondent's
18 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
19 within no more than 15 days of any address change and shall at all times maintain an active,
20 current license status with the Board, including during any period of suspension.

21 Upon successful completion of probation, Respondent's license shall be fully
22 restored.

23 3. **Report in Person.** Respondent, during the period of probation, shall
24 appear in person at interviews/meetings as directed by the Board or its designated
25 representatives.

26 4. **Residency, Practice, or Licensure Outside of State.** Periods of
27 residency or practice as a registered nurse outside of California shall not apply toward a reduction
28 of this probation time period. Respondent's probation is tolled, if and when he resides outside of

1 California. Respondent must provide written notice to the Board within 15 days of any change of
2 residency or practice outside the state, and within 30 days prior to re-establishing residency or
3 returning to practice in this state.

4 Respondent shall provide a list of all states and territories where he has ever been
5 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
6 provide information regarding the status of each license and any changes in such license status
7 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
8 new nursing license during the term of probation.

9 **5. Submit Written Reports.** Respondent, during the period of probation,
10 shall submit or cause to be submitted such written reports/declarations and verification of actions
11 under penalty of perjury, as required by the Board. These reports/declarations shall contain
12 statements relative to Respondent's compliance with all the conditions of the Board's Probation
13 Program. Respondent shall immediately execute all release of information forms as may be
14 required by the Board or its representatives.

15 Respondent shall provide a copy of this Decision to the nursing regulatory agency
16 in every state and territory in which he has a registered nurse license.

17 **6. Function as a Registered Nurse.** Respondent, during the period of
18 probation, shall engage in the practice of registered nursing in California for a minimum of 24
19 hours per week for 6 consecutive months or as determined by the Board.

20 For purposes of compliance with the section, "engage in the practice of registered
21 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
22 work in any non-direct patient care position that requires licensure as a registered nurse.

23 The Board may require that advanced practice nurses engage in advanced practice
24 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
25 Board.

26 If Respondent has not complied with this condition during the probationary term,
27 and Respondent has presented sufficient documentation of his good faith efforts to comply with
28 this condition, and if no other conditions have been violated, the Board, in its discretion, may

1 grant an extension of Respondent's probation period up to one year without further hearing in
2 order to comply with this condition. During the one year extension, all original conditions of
3 probation shall apply.

4 7. **Employment Approval and Reporting Requirements.** Respondent
5 shall obtain prior approval from the Board before commencing or continuing any employment,
6 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
7 performance evaluations and other employment related reports as a registered nurse upon request
8 of the Board.

9 Respondent shall provide a copy of this Decision to his employer and immediate
10 supervisors prior to commencement of any nursing or other health care related employment.

11 In addition to the above, Respondent shall notify the Board in writing within
12 seventy-two (72) hours after he obtains any nursing or other health care related employment.
13 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
14 or separated, regardless of cause, from any nursing, or other health care related employment with
15 a full explanation of the circumstances surrounding the termination or separation.

16 8. **Supervision.** Respondent shall obtain prior approval from the Board
17 regarding Respondent's level of supervision and/or collaboration before commencing or
18 continuing any employment as a registered nurse, or education and training that includes patient
19 care.

20 Respondent shall practice only under the direct supervision of a registered nurse
21 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
22 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
23 are approved.

24 Respondent's level of supervision and/or collaboration may include, but is not
25 limited to the following:

26 (a) **Maximum** - The individual providing supervision and/or collaboration is
27 present in the patient care area or in any other work setting at all times.

28 ///

1 (b) Moderate - The individual providing supervision and/or collaboration is in
2 the patient care unit or in any other work setting at least half the hours Respondent works.

3 (c) Minimum - The individual providing supervision and/or collaboration has
4 person-to-person communication with Respondent at least twice during each shift worked.

5 (d) Home Health Care - If Respondent is approved to work in the home health
6 care setting, the individual providing supervision and/or collaboration shall have person-to-
7 person communication with Respondent as required by the Board each work day. Respondent
8 shall maintain telephone or other telecommunication contact with the individual providing
9 supervision and/or collaboration as required by the Board during each work day. The individual
10 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
11 site visits to patients' homes visited by Respondent with or without Respondent present.

12 9. **Employment Limitations.** Respondent shall not work for a nurse's
13 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
14 traveling nurse, or for an in-house nursing pool.

15 Respondent shall not work for a licensed home health agency as a visiting nurse
16 unless the registered nursing supervision and other protections for home visits have been
17 approved by the Board. Respondent shall not work in any other registered nursing occupation
18 where home visits are required.

19 Respondent shall not work in any health care setting as a supervisor of registered
20 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
21 nurses and/or unlicensed assistive personnel on a case-by-case basis.

22 Respondent shall not work as a faculty member in an approved school of nursing
23 or as an instructor in a Board approved continuing education program.

24 Respondent shall work only on a regularly assigned, identified and predetermined
25 worksite(s) and shall not work in a float capacity.

26 If Respondent is working or intends to work in excess of 40 hours per week, the
27 Board may request documentation to determine whether there should be restrictions on the hours
28 of work.

1 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
3 than six months prior to the end of his probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the
5 course(s). Respondent shall submit to the Board the original transcripts or certificates of
6 completion for the above required course(s). The Board shall return the original documents to
7 Respondent after photocopying them for its records.

8 11. **Violation of Probation.** If Respondent violates the conditions of his
9 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
10 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
11 license.

12 If during the period of probation, an accusation or petition to revoke probation has
13 been filed against Respondent's license or the Attorney General's Office has been requested to
14 prepare an accusation or petition to revoke probation against Respondent's license, the
15 probationary period shall automatically be extended and shall not expire until the accusation or
16 petition has been acted upon by the Board.

17 12. **License Surrender.** During Respondent's term of probation, if he ceases
18 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
19 probation, Respondent may surrender his license to the Board. The Board reserves the right to
20 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
21 take any other action deemed appropriate and reasonable under the circumstances, without
22 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
23 will no longer be subject to the conditions of probation.

24 Surrender of Respondent's license shall be considered a disciplinary action and
25 shall become a part of Respondent's license history with the Board. A registered nurse whose
26 license has been surrendered may petition the Board for reinstatement no sooner than the
27 following minimum periods from the effective date of the disciplinary decision:

28 ///

1 (1) Two years for reinstatement of a license that was surrendered for any
2 reason other than a mental or physical illness; or

3 (2) One year for a license surrendered for a mental or physical illness.

4 13. **Physical Examination.** Within 45 days of the effective date of this
5 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
6 physician assistant, who is approved by the Board before the assessment is performed, submit an
7 assessment of the Respondent's physical condition and capability to perform the duties of a
8 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
9 medically determined, a recommended treatment program will be instituted and followed by the
10 Respondent with the physician, nurse practitioner, or physician assistant providing written
11 reports to the Board on forms provided by the Board.

12 If Respondent is determined to be unable to practice safely as a registered nurse,
13 the licensed physician, nurse practitioner, or physician assistant making this determination shall
14 immediately notify the Board and Respondent by telephone, and the Board shall request that the
15 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
16 shall immediately cease practice and shall not resume practice until notified by the Board.
17 During this period of suspension, Respondent shall not engage in any practice for which a license
18 issued by the Board is required until the Board has notified Respondent that a medical
19 determination permits Respondent to resume practice. This period of suspension will not apply
20 to the reduction of this probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within
22 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
23 practice until notified by the Board. This period of suspension will not apply to the reduction of
24 this probationary time period. The Board may waive or postpone this suspension only if
25 significant, documented evidence of mitigation is provided. Such evidence must establish good
26 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
27 provided. Only one such waiver or extension may be permitted.

28 ///

1 14. **Participate in Treatment/Rehabilitation Program for Chemical**
2 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
3 period or shall have successfully completed prior to commencement of probation a Board-
4 approved treatment/rehabilitation program of at least six months duration. As required, reports
5 shall be submitted by the program on forms provided by the Board. If Respondent has not
6 completed a Board-approved treatment/rehabilitation program prior to commencement of
7 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
8 a program. If a program is not successfully completed within the first nine months of probation,
9 the Board shall consider Respondent in violation of probation.

10 Based on Board recommendation, each week Respondent shall be required to
11 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
12 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
13 by the Board. If a nurse support group is not available, an additional 12-step meeting or
14 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
15 such attendance to the Board during the entire period of probation. Respondent shall continue
16 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
17 mental health examiner and/or other ongoing recovery groups.

18 15. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
19 shall completely abstain from the possession, injection or consumption by any route of all
20 psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a
21 health care professional legally authorized to do so as part of documented medical treatment.
22 Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the
23 prescribing health professional, a report identifying the medication, dosage, the date the
24 medication was prescribed, the Respondent's prognosis, the date the medication will no longer
25 be required, and the effect on the recovery plan, if appropriate.

26 Respondent shall identify for the Board a single physician, nurse practitioner or
27 physician assistant who shall be aware of Respondent's history of substance abuse and will
28 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled

1 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
2 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
3 condition. If any substances considered addictive have been prescribed, the report shall identify a
4 program for the time limited use of any such substances.

5 The Board may require the single coordinating physician, nurse practitioner, or
6 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
7 addictive medicine.

8 16. **Submit to Tests and Samples.** Respondent, at his expense, shall
9 participate in a random, biological fluid testing or a drug screening program which the Board
10 approves. The length of time and frequency will be subject to approval by the Board.
11 Respondent is responsible for keeping the Board informed of Respondent's current telephone
12 number at all times. Respondent shall also ensure that messages may be left at the telephone
13 number when he is not available and ensure that reports are submitted directly by the testing
14 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
15 to the Board by the program and Respondent shall be considered in violation of probation.

16 In addition, Respondent, at any time during the period of probation, shall fully
17 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
18 tests and samples as the Board or its representatives may require for the detection of alcohol,
19 narcotics, hypnotics, dangerous drugs, or other controlled substances.

20 If Respondent has a positive drug screen for any substance not legally authorized
21 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
22 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
23 from practice pending the final decision on the petition to revoke probation or the accusation.
24 This period of suspension will not apply to the reduction of this probationary time period.

25 If Respondent fails to participate in a random, biological fluid testing or drug
26 screening program within the specified time frame, Respondent shall immediately cease practice
27 and shall not resume practice until notified by the Board. After taking into account documented
28 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the

1 Board may suspend Respondent from practice pending the final decision on the petition to
2 revoke probation or the accusation. This period of suspension will not apply to the reduction of
3 this probationary time period.

4 17. **Mental Health Examination.** Respondent shall, within 45 days of the
5 effective date of this Decision, have a mental health examination including psychological testing
6 as appropriate to determine his capability to perform the duties of a registered nurse. The
7 examination will be performed by a psychiatrist, psychologist or other licensed mental health
8 practitioner approved by the Board. The examining mental health practitioner will submit a
9 written report of that assessment and recommendations to the Board. All costs are the
10 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
11 result of the mental health examination will be instituted and followed by Respondent.

12 If Respondent is determined to be unable to practice safely as a registered nurse,
13 the licensed mental health care practitioner making this determination shall immediately notify
14 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
15 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
16 practice and may not resume practice until notified by the Board. During this period of
17 suspension, Respondent shall not engage in any practice for which a license issued by the Board
18 is required, until the Board has notified Respondent that a mental health determination permits
19 Respondent to resume practice. This period of suspension will not apply to the reduction of this
20 probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within
22 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
23 practice until notified by the Board. This period of suspension will not apply to the reduction of
24 this probationary time period. The Board may waive or postpone this suspension only if
25 significant, documented evidence of mitigation is provided. Such evidence must establish good
26 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
27 provided. Only one such waiver or extension may be permitted.

28 ///

1 18. Therapy or Counseling Program. Respondent, at his expense, shall
2 participate in an on-going counseling program until such time as the Board releases him from this
3 requirement and only upon the recommendation of the counselor. Written progress reports from
4 the counselor will be required at various intervals.

5 ///

6 ACCEPTANCE

7 I have carefully read the Stipulated Settlement and Disciplinary Order. I
8 understand the stipulation and the effect it will have on my Registered Nurse License. I enter
9 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
10 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

11 DATED: 04/27/04.

12
13 
14 MARK RONALD BROWN
Respondent

15
16
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
20 Affairs.

21
22 DATED: 5/10/04.

23 BILL LOCKYER, Attorney General
of the State of California


24
25 
26 MICHAEL J. FIELDING
27 Deputy Attorney General
Attorneys for Complainant
28

Exhibit A

Statement of Issues No. 2004-232

1 BILL LOCKYER, Attorney General
of the State of California
2 RONALD L. DIEDRICH, State Bar No. 95146
Supervising Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
6 E-mail: ron.diedrich@doj.ca.gov

7 Attorneys for Complainant

8
9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11
12 In the Matter of the Statement of Issues Against:

Case No. 2004-232

13 **MARK RONALD BROWN**
P.O. Box 911
14 Haiku, Hawaii 96708

STATEMENT OF ISSUES

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Statement of
21 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about August 22, 2002, the Board received an Application for RN
24 Licensure by Endorsement from Mark Ronald Brown ("Respondent"). The Board denied the
25 application on January 10, 2003. On or about February 24, 2003, Respondent sent the Board a
26 written request for an appeal of the Board's denial of his license application.

27 ///

28 ///

JURISDICTION

3. Business and Professions Code ("Code") section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.

4. Code section 485 states, in pertinent part:

Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

(b) Notify the applicant that the application is denied, stating (1) the reasons for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

STATUTORY PROVISIONS

5. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, . . .

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which

1 event the record of the conviction shall be conclusive evidence thereof.

2 7. Code section 2762 states, in pertinent part:

3 In addition to other acts constituting unprofessional conduct within
4 the meaning of this chapter [the Nursing Practice Act], it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

5 (a) Obtain or possess in violation of law, or prescribe, or except
6 as directed by a licensed physician and surgeon, dentist, or podiatrist
administer to himself or herself, or furnish or administer to another, any
7 controlled substance as defined in Division 10 (commencing with Section
11000) of the Health and Safety Code or any dangerous drug or dangerous
device as defined in Section 4022.

8 (b) Use any controlled substance as defined in Division 10
9 (commencing with Section 11000) of the Health and Safety Code, or any
dangerous drug or dangerous device as defined in Section 4022, or
10 alcoholic beverages, to an extent or in a manner dangerous or injurious to
11 himself or herself, any other person, or the public or to the extent that such
use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

12 (c) Be convicted of a criminal offense involving the prescription,
13 consumption, or self-administration of any of the substances described in
14 subdivisions (a) and (b) of this section, or the possession of, or
falsification of a record pertaining to, the substances described in
15 subdivision (a) of this section, in which event the record of the conviction
is conclusive evidence thereof.

16 8. Code section 4060 states, in pertinent part, that no person shall possess any
17 controlled substance except that furnished to a person upon the prescription of a physician,
18 dentist, podiatrist, or veterinarian.

19 CONTROLLED SUBSTANCES

20 9. "Marijuana" is a Schedule I controlled substance as designated by Health
21 and Safety Code section 11054, subdivision (d)(13).

22 10. "Morphine/Morphine Sulfate" is a Schedule II controlled substance as
23 designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

24 11. "Demerol," a brand of meperidine hydrochloride, a derivative of pethidine,
25 is a Schedule II controlled substance as designated by Health and Safety Code section 11055,
26 subdivision (c)(17).

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
84

2
3
4
5
6
7
8

3
4
5
6
7
8

9
10
11
12

13

1.

1:
1:
1:
1:
1:

2

2
2
2
2

222

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 (Use of Controlled Substances and Alcoholic Beverages in a Dangerous Manner)

3 15. Respondent's application is also subject to denial pursuant to Code section
4 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
5 2762, subdivision (b). While licensed as a registered nurse, Respondent used controlled
6 substances and alcoholic beverages to an extent or in a manner dangerous or injurious to himself,
7 others and the public by virtue of the following acts, either one of which, in and of itself,
8 constitutes a sufficient basis upon which to deny his application:

9 a. On or about December 21, 1995, Respondent operated a motor vehicle
10 while under the influence of intoxicating liquor and Marijuana as set forth in paragraph 13 above.

11 b. In or about October 1999, while on duty at Maui Memorial Medical
12 Center, Hawaii, Respondent unlawfully was under the influence of intravenous Morphine and
13 Demerol, which are controlled substances.

14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

15 (Conviction of Criminal Offenses Involving the Use of
16 Controlled Substances and Alcoholic Beverages)

17 16. Respondent's application is also subject to denial pursuant to Code section
18 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
19 2762, subdivision (c), in that in or about 1996, Respondent was convicted of a criminal offense
20 involving the use of a controlled substance and alcoholic beverages as set forth in paragraph 12
21 above.

22 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

23 (Disciplinary Action by the Hawaii State Board of Nursing)

24 17. Respondent's application is also subject to denial pursuant to Code section
25 2761, subdivision (a)(4), in that on April 6, 2001, the Hawaii State Board of Nursing ("the
26 Hawaii Board") disciplined Respondent's registered nurse license pursuant to the Hawaii Board's
27 Final Order entered *In the Matter of the License to Practice Nursing of Mark R. Brown*, Case No.
28 RNS 2000-4-L.


1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Denying the application of Mark Ronald Brown for licensure as a
5 registered nurse; and

6 2. Taking such other and further action as deemed necessary and proper.

7
8 DATED: 3/8/04.

9
10 
11 RUTH ANN TERRY, M.P.H., R.N.
12 Executive Officer
13 Board of Registered Nursing
14 Department of Consumer Affairs
15 State of California

16
17
18
19
20
21
22
23
24
25
26
27
28
Complainant

03579110-SA2003102104
pd; 2/19/2004

DEBI S. TULANG-DE SILVA 6190
Regulated Industries Complaints
Office
Department of Commerce and Consumer
Affairs
235 South Beretania Street, 9th Floor
Honolulu, Hawaii 96813
Telephone: 586-2660

Attorney for Petitioner

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

MAR 19 9 47 AM '01

HEARINGS OFFICE

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS
HEARINGS OFFICE
APR 9 9 10 AM '01

BOARD OF NURSING
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the
License to Practice Nursing of

MARK R. BROWN;

Respondent.

RNS 2000-4-L

SETTLEMENT AGREEMENT PRIOR
TO FILING OF PETITION FOR
DISCIPLINARY ACTION AND
BOARD'S FINAL ORDER;
EXHIBIT "1"

SAVE

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

MARK R. BROWN (hereinafter "Respondent") and the
Department of Commerce and Consumer Affairs, by and through its
Regulated Industries Complaints Office (hereinafter "RICO"),
enter into this Settlement Agreement as follows:

WHEREAS, RICO received a complaint alleging Respondent
had engaged in professional misconduct, unethical practices, and
substance abuse, by diverting narcotics for his own use while
employed at the Maui Memorial Medical Center;

WHEREAS, at all times relevant herein, Respondent was
licensed by the Board to act as a nurse under License Number RN
45044;

I HEREBY CERTIFY THAT THE ATTACHED
IS A TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THE DEPARTMENT
OF COMMERCE & CONSUMER AFFAIRS.

[Signature]

WHEREAS, Respondent has been fully informed of the allegations which may be proven should this matter proceed to hearing;

WHEREAS, Respondent understands he is subject to penalties, including but not limited to, revocation or suspension of his license if the violations alleged are proven at hearing;

WHEREAS, all relevant acts herein occurred in the State of Hawaii;

WHEREAS, Respondent enters into this Settlement Agreement represented by Philip H. Lowenthal, Lowenthal & August, 33 North Market Street, Suite 101, Wailuku, Maui, Hawaii 96793;

WHEREAS, Respondent's current address is 690 Honopou Road, Haiku, Hawaii 96708;

WHEREAS, Respondent has been fully apprised of his right to a hearing pursuant to HRS Chapters 91 and 92, and has voluntarily elected to waive his right to a hearing;

WHEREAS, Respondent wishes to settle this matter to avoid the risks and expenses of an administrative hearing; and

WHEREAS, the parties hereto desire to settle this matter without a hearing;

NOW, THEREFORE, RICO and Respondent agree, subject to the approval and order of the Board of Nursing (hereinafter "Board"), that:

1. Jurisdiction. The Board has jurisdiction over the subject matter herein and over the parties hereto.

2. Waiver of right to hearing. Pursuant to § 91-

9(d), HRS, Respondent voluntarily waives his right to a hearing and agrees to a disposition of this case pursuant to the terms and conditions of this Settlement Agreement.

3. No coercion or duress. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress. Respondent acknowledges that he is fully aware that in so doing he is subject to disciplinary sanctions pursuant to the terms herein.

4. Administrative Fine. Respondent agrees to pay an Administrative Fine of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). Said fine shall be paid within thirty (30) days from the approval of this Settlement Agreement by the Board. Said payment shall be made by cashier's check or money order made payable to "DCCA Compliance Resolution Fund" and delivered via certified mail to the Regulated Industries Complaints Office, 235 S. Beretania St., 9th Floor, Honolulu, Hawaii 96813. SAVE

5. Compliance with Terms and Conditions of Impact Maui Drug Court Program. Respondent represents that he was criminally charged for his diversion of narcotics for his own use while employed at Maui Memorial Medical Center. Respondent further represents that he was subsequently accepted into the Impact Maui Drug Court Program and is currently in compliance with the terms and conditions of the program. Respondent agrees to comply with the terms and conditions of the Impact Maui Drug Court Program as a part of this Settlement Agreement. (See Terms

and Conditions of the Impact Maui Drug Court Program attached as Exhibit "1").

6. Failure to abide by terms of this Settlement Agreement. In the event that Respondent fails to abide by any of the terms of the Settlement Agreement, Respondent agrees to the revocation of his license without further hearing, upon the Board's receipt of an Affidavit from RICO attesting to any such violation and/or failure by Respondent. Upon the revocation of Respondent's license, Respondent understands that he shall not apply for a license for a period of five (5) years. If Respondent's license is revoked, Respondent shall turn in all indicia of his licensure to the Executive Officer of the Board within five (5) days after receipt of notice that his license has been revoked.

7. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the practice of nursing in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

8. Approval of the Board. Respondent is aware that this Settlement Agreement shall not become binding upon any of the parties hereto unless and until it is approved by the Board.

9. No objection if Board fails to approve. If the Board does not approve the Settlement Agreement, does not issue

10:55 AM 5:17

an order pursuant thereto or does not approve a lesser and/or alternative remedy and instead requires that this matter be presented for administrative hearing before a hearings officer of the Department of Commerce and Consumer Affairs in accordance with HRS Chapters 91 and 92, Respondent agrees that he will not raise any objection on any administrative and/or adjudicatory level on the basis that the Board has become disqualified to consider this case because of its review and consideration of the Settlement Agreement.

10. Ambiguities, if any, shall be construed to protect the consuming public. The language and terms of this Agreement are the product of negotiation between the parties hereto and/or their attorneys and the rule that ambiguities shall be construed against the drafter of this Agreement do not apply. The parties did not intend to use ambiguous language, but if any ambiguities exist, they should be construed against the parties in the manner which most completely protects the interest of the consuming public. SAVE

11. No reliance upon representations of RICO. Other than the matters specifically stated in this Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Agreement, and Respondent is not relying upon any statement, representations, opinions or promises made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising

from the subject matter of this Agreement or concerning any other matter or thing.

12. Complete Agreement. This Settlement Agreement:

- a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto;
 - b) contains the entire agreement of the parties;
- and
- c) may only be modified, changed or amended by written instrument duly executed by all parties hereto.

DATED: Wailuku, Hawaii, 3/1, 2001.

Mark R. Brown
MARK R. BROWN
Respondent

APPROVED AS TO FORM:

Philip B. Lowenthal
PHILIP B. LOWENTHAL
Attorney for Respondent

SAVE

DATED: Honolulu, Hawaii, March 8, 2001.

Debi S. Tulang De Silva
DEBI S. TULANG DE SILVA
Attorney for Petitioner

IN THE MATTER OF THE LICENSE TO PRACTICE NURSING OF MARK R.
BROWN; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR
DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
RNS 2000-4-L

APPROVED AND SO ORDERED:

BOARD OF NURSING
State of Hawaii

Valisa Saunders
VALISA SAUNDERS MSN, APRN
Chairperson

4/6/01
DATE

Barbara K. Ideta
BARBARA K. IDETA, MSN, RN
Vice Chairperson

4/6/01 June M. Hiraki
JUNE M. HIRAKI, BSN/CETN, RN

Joanne Itano
JOANNE ITANO, PhD APRN

Naomi Masuda
NAOMI MASUDA BS

SANDRA M. MYERS, LPN

KENDALL D. SHARPLESS, RN

RICHARD W. CARMICHAEL APRN, MS, MPH

STEPHEN A. KULA PhD NHA

SAVE

STATE OF HAWAII

COUNTY OF MAUI

SS.

On this 1st day of March, 2001, before me personally appeared MARK R. BROWN, to me known to be the person described, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Melinda Sisto

NAME:

Notary Public, State of Hawaii

My commission expires: 08/01/2003

SAVE

EXHIBIT 2

Mark Brown Accusation

ORIGINAL

BEFORE THE NEVADA STATE BOARD OF NURSING

IN THE MATTER OF
MARK BROWN
LICENSED PROFESSIONAL NURSE
APPLICANT
RESPONDENT

AGREEMENT FOR
PROBATION

CASE NO. 1104-08Y

This Agreement is hereby entered into between MARK BROWN, (RESPONDENT) and the NEVADA STATE BOARD OF NURSING, (BOARD).

It is hereby stipulated and agreed, by and between the parties to the above-entitled matter, that the following statements are true:

1. Respondent is aware of, understands, and has been advised of the effect of this Agreement, which Respondent herein has carefully read and fully acknowledges. No coercion has been exerted on the Respondent. Respondent acknowledges his right to an attorney at his own expense. The Respondent has had the benefit at all times of obtaining advice from competent counsel of his choice.

2. Respondent understands the nature of the allegations under investigation by the Nevada State Board of Nursing. Respondent freely admits that he is addicted to alcohol and/or controlled substances and that he has had three drug and/or alcohol related convictions from 1987 - 2000. In addition, Respondent freely admits that his registered nursing license in California was placed on Probation on 08/25/04, based on criminal convictions and substance abuse and reinstated 09/21/07. His registered nursing license in Hawaii was placed on probation on October 11, 2001, and Voluntarily Surrendered prior to filing of Petition for Disciplinary Action on 05/05/06. He may apply for a new license after five years. Respondent acknowledges this conduct constitutes a violation of the Nevada Revised Statutes 632.320 (2) criminal convictions, (5) dangerous drugs or intoxicating liquor, (12) action in another state, and

1 (7) unprofessional conduct. Respondent further acknowledges that such acts and admissions
2 subject him to disciplinary action by the Board.

3 3. Respondent is aware of the Respondent's rights, including the right to a hearing
4 on any charges and allegations, the right to an attorney at his own expense, the right to examine
5 witnesses who would testify against him, the right to present evidence in his favor and call
6 witnesses on his behalf, or to testify himself, the right to contest the charges and allegations, the
7 right to reconsideration, appeal or any other type of formal judicial review of this matter, and any
8 other rights which may be accorded to him pursuant to the Nevada Administrative Procedures
9 Act and the provisions of Chapter 632 of the Nevada Revised Statutes and the Nevada
10 Administrative Code. Respondent agrees to waive the foregoing rights upon acceptance of
11 this Agreement by the Board.

12 4. Respondent understands that the Board is free to accept or reject this Agreement,
13 and if rejected by the Board, a disciplinary proceeding may be commenced.

14 5. Should the Agreement be rejected by the Board, it is agreed that presentation to
15 and consideration by the Board of such proposed Agreement, shall not disqualify the Board, or
16 any of its members, from further participation, consideration, adjudication or resolution of these
17 proceedings, and that no Board member shall be disqualified or challenged for bias therefore.

18 6. If, after notice and hearing, Respondent is found to have violated the terms or
19 conditions of probations, the Board may revoke probation for Respondent and carry out the
20 disciplinary order of revocation set forth herein. The Board shall have continuing jurisdiction
21 over any petition to revoke probation filed against Respondent until such matter is final.

22 7. This Agreement shall only become effective when both parties have duly
23 executed it and unless so executed, this Agreement will not be construed as an admission.

24 8. This Agreement shall not be construed as excluding or reducing any criminal or
25 civil penalties or sanction or other remedies that may be applicable under federal, state or local
26 laws.

27 9. This Agreement shall cover any nursing license or certificate issued by the State
28 of Nevada.

- 1 10. Based upon the foregoing stipulations and recitals, it is hereby agreed that the
2 Board may issue the following decision and order:

3
4 **DECISION AND ORDER**

5 IT IS HEREBY ORDERED that upon the completion of licensure requirements, MARK
6 BROWN be issued a license as a Nevada Licensed Professional Nurse, and the license be
7 revoked, provided, however, that the execution of the order of revocation is stayed, and the
8 license is placed on probation (RESTRICTED LICENSURE) for a minimum of five (5) years
9 with the following terms and conditions:

10 1. **LICENSE MARKED "RESTRICTED" AND RETURN OF UNMARKED**
11 **LICENSE**

12 Respondent shall have his license marked "Restricted" through out the probationary period.
13 Upon receipt of the marked license, Respondent shall immediately return his unmarked license to
14 the Board office.

15 2. **WRITTEN NOTIFICATION OF CHANGE OF ADDRESS**

16 Respondent shall notify the Board, in writing of, and prior to, any change of address.

17 3. **ABSTINENCE FROM ALCOHOL, MOOD ALTERING DRUGS,**
18 **CONTROLLED SUBSTANCES**

19 Respondent shall abstain from the use of alcohol and all mood-altering drugs and controlled
20 substances except when absolutely required for documented medical treatment. All other
21 methods of alternative treatment must be tried, and failure must be documented prior to use of
22 any mood-altering drugs. This treatment must be prescribed by a person authorized by law to
23 prescribe such substances, and who is knowledgeable about the disease of addiction and the
24 Respondent's history. This treatment must be reported to the Board, in writing, within seven (7)
25 days, accompanied by the above-described documentation. The Board may require additional
26 treatment until Respondent documents sobriety after periods of prescribed drug use.

27 ///

1 4. **PARTICIPATION IN BOARD-APPROVED AFTERCARE PROGRAM**

2 Respondent shall participate in a Board-approved aftercare program for a minimum of one year.
3 Such program shall include a minimum of weekly aftercare group sessions and individual
4 counseling not less than twice per month. Individual counseling shall be provided by a Board-
5 approved Certified Substance Abuse Counselor, Certified Chemical Dependency Nurse, or other
6 approved treatment provider.

7 5. **COUNSELOR REPORTS (DUE QUARTERLY)**

8 Respondent shall have a Board approved substance abuse counselor, or other state licensed
9 counselor, associated with his aftercare program who shall:

- 10 a. Have been approved by the Board prior to the initiation of
 treatment;
11 b. Submit progress reports related to the plan of treatment every three
12 (3) months;
13 c. Identify at the completion of one (1) year of the aftercare program
14 whether Respondent needs to continue in aftercare or other
15 counseling;
16 d. Respondent shall participate in individual counseling with a Board
17 approved counselor until the counselor and the Executive Director
18 or the Compliance Coordinator approve discontinuance;
19 e. All changes in counselors shall be approved prior to their
20 implementation;
21 f. A second opinion may be required to terminate any counseling.

22 6. **SUBMISSION OF EVIDENCE OF ATTENDANCE AT ALCOHOLICS**

23 **ANONYMOUS (AA) OR NARCOTICS ANONYMOUS (NA) MEETINGS**

24 Respondent shall attend a minimum of two (2) meetings per week of Alcoholics Anonymous
25 (AA) or Narcotics Anonymous (NA) throughout probation, and shall submit documentation of
26 all meetings attended to the Board on a quarterly basis. Consideration for alternative recovery
27 support groups will be evaluated by the Compliance Coordinator.
28

///

1 7. **SUBMISSION OF AA/NA SPONSOR REPORTS**

2 Respondent shall cause his AA or NA sponsor to submit reports addressing Respondent's
3 progress in recovery, on forms provided by the Board, on a quarterly basis.

4 8. **ATTENDANCE AT NURSE SUPPORT GROUP**

5 Respondent shall attend weekly meetings of a Board-approved Nurse Support Group and submit
6 documentation of all meetings attended to the Board on a quarterly basis.

7 9. **SUBMISSION TO URINE, BLOOD, OR OTHER TESTS FOR DRUGS OF**
8 **ABUSE**

9 Respondent shall submit to random urine, blood or other tests for drugs of abuse and/or alcohol
10 when requested by her counselor, supervisor, or representative of the Board; however, these tests
11 shall occur no less than twelve (12) times per year. Respondent shall register with the Board
12 approved urine drug screening program and, if necessary, cause his physician to write a standing
13 order for testing for alcohol and drugs of abuse. These tests shall be treated as forensic
14 specimens and submitted to a Board-approved laboratory. Respondent shall cause the results to
15 be given to the requesting party and the Board. Any confirmed positive finding shall be reported
16 immediately to the Board. Changes in frequency of tests may be approved by the Compliance
17 Coordinator and/or the Disability Advisory Committee.

18 10. **ATTENDANCE AT A BOARD MEETING MANDATORY**

19 Respondent shall, during the first year of this Agreement, attend a minimum of one meeting of
20 the Nevada State Board of Nursing during which disciplinary hearings are held. This shall not
21 include any meeting at which his own case is considered.

22 11. **TIME EARNED OFF PROBATION**

23 Respondent shall only receive credit toward service of his probation period while employed in a
24 capacity for which nursing licensure is required and subject to adequate supervision approved by
25 the Board.

26 12. **WRITTEN EMPLOYMENT SITE APPROVAL BY BOARD STAFF**

27 The Board shall approve all employment sites (changes in specialty and/or work site or unit,
28 including changes within the same facility or under the same employer) requiring a nursing

1 license prior to commencement of work. Approval is given through the Executive Director, or
2 the Compliance Coordinator. Registration with the Board approved urine drug-screening
3 program is required prior to commencement of employment.

4 13. WRITTEN NOTIFICATION OF TERMINATION OF EMPLOYMENT TO
5 BOARD

6 Respondent is required to notify the Board in writing within seventy-two (72) hours after
7 commencement or termination of any nursing employment. Any notification regarding
8 termination shall contain a full explanation of the circumstances surrounding it.

9 14. DIRECTION BY A REGISTERED NURSE

10 Respondent shall be employed in a setting in which direction is provided by a Registered Nurse.
11 Direction shall mean: the intermittent observation, guidance and evaluation of the nursing
12 practice by a licensed professional nurse who may only occasionally be physically present; the
13 degree of direction needed shall be determined by an evaluation of the patient care situation, and
14 the demonstrated proficiency of the Respondent.

15 15. RESTRICTION FROM FUNCTIONING IN A SUPERVISORY ROLE

16 Respondent may not function as a supervisor, including as a head nurse or charge nurse for a
17 minimum of one (1) year and unless approved by the Compliance Coordinator and/or the
18 Disability Advisory Committee.

19 16. ACCESS TO CONTROLLED SUBSTANCES

20 Respondent shall have no access to controlled substances during his employment as a licensed
21 nurse for a minimum of ^{five (5) yrs} one (1) year and until specifically authorized by the Compliance
22 Coordinator and/or the Disability Advisory Committee.

23 17. LIMITATION ON HOURS WORKED

24 Respondent shall not work more than ninety (90) hours in nursing in a two (2) week period.
25 Changes in hours may be approved by the Compliance Coordinator and/or the Disability
26 Advisory Committee.

27 ///

1 18. **SUBMISSION OF AGREEMENT TO IMMEDIATE SUPERVISOR**

2 Respondent shall provide a complete copy of this Agreement to her employer and immediate
3 supervisor prior to commencement of work.

4 19. **INITIAL SUPERVISOR REPORTS (DUE PRIOR TO BEGINNING**
5 **EMPLOYMENT)**

6 Respondent shall cause his nursing supervisor (the person who is directly responsible for
7 everyday nursing functions) to submit a written report prior to the commencement of
8 employment. A form is provided for this report. A report shall be submitted by each additional
9 or subsequent supervisor during the entire probationary period and shall be due prior to the
10 commencement of employment.

11 20. **SUPERVISOR REPORTS**

12 Respondent shall cause his nursing supervisor (the person who is directly responsible for
13 everyday nursing functions) to submit ^{Monthly} ~~quarterly~~ written reports to the Board addressing work
14 attendance, reliability, ability to carry out assigned nursing functions, ability to handle stress
15 (change in behavior patterns), and any other information the employer or supervisor feels would
16 assist the Board in its ultimate review of Respondent's case. The supervisor shall include
17 notification of any infractions of laws that come to his attention, and any other relevant
18 information.

19 21. **SELF REPORTS**

20 Respondent shall submit written reports, whether working or not, on his progress in recovery, his
21 ability to handle stress, his mental and physical health, his current job duties and responsibilities,
22 his ability to practice nursing safely, and any changes in his plan for meeting the stipulations of
23 this Agreement. It is the Respondent's responsibility to resolve any confusion with the
24 Executive Director or Compliance Coordinator. Failure to demonstrate acceptable progress in
25 recovery may be considered a violation of this Agreement.

26 22. **REPORT DUE DATES**

27 Respondent shall cause all reports to be in writing and submitted directly to the Board on a
28 ^{Monthly} ~~quarterly~~ basis whether working or not unless otherwise specified. These reports shall begin

one (1) month subsequent to the execution of this Agreement and are due no later than the last day of the month. It is the obligation of the Respondent to ensure that all written reports are on time. The failure to submit the reports on time may be considered a violation of this Agreement. Changes in the frequency of reporting may be approved by the Executive Director or the Compliance Coordinator and/or the Disability Advisory Committee.

23. **ATTENDANCE AT ORIENTATION MANDATORY**

Respondent shall attend an orientation meeting to facilitate understanding and accountability of the terms and conditions of this Agreement/Order as scheduled by the Compliance Coordinator. Failure to attend this orientation will be considered a violation of this Agreement/Order.

24. **REQUIREMENT TO MEET WITH THE BOARD OR STAFF UPON REQUEST**

Respondent shall meet with the Board or its representatives upon request and shall cooperate with representatives of the Board in their supervision and investigation of Respondent's compliance with the terms and conditions of this Agreement.

25. **FINANCIAL RESPONSIBILITIES AND MONITORING FEES (DUE MONTHLY)**

Respondent shall be financially responsible for all requirements of this Agreement, including any financial assessments by the Board for the cost of monitoring his compliance with this Agreement. Respondent may be assessed a late fee for monitoring fees that are received more than ten (10) calendar days after the due date.

26. **REQUIRED NOTIFICATION OF OTHER STATES OF LICENSURE AND/OR CERTIFICATION**

Respondent shall, upon execution of this Agreement, provide a copy of this Agreement to any other state Board of Nursing in whose jurisdiction he has been issued a nursing license (current or not). Respondent shall also provide a copy of this Agreement to any other regulatory agency in whose jurisdiction he has applied or will apply for a license.

///

1 27. **VIOLATIONS TO BE REPORTED TO BOARD WITHIN SEVENTY-TWO**

2 **(72) HOURS**

3 Respondent shall practice in accordance with the Nurse Practice Act and Board established
4 Standards of Practice. Respondent shall obey all federal, state and local laws, employer policy or
5 contracts, and orders of the Board, pertaining to the practice of nursing in this state. Any and all
6 violations shall be reported by the Respondent to the Board in writing within seventy-two (72)
7 hours. It is the Respondent's responsibility to resolve with the Executive Director, or the
8 Compliance Coordinator any confusion regarding what laws pertain to nursing.

9 28. **CONSEQUENCES OF FURTHER VIOLATIONS INCLUDING**

10 **VIOLATIONS OF THIS AGREEMENT; AGREEMENT TO SURRENDER**
11 **LICENSE AND/OR CERTIFICATE**

12 Respondent acknowledges that if he should violate one or more of the terms of restricted
13 licensure, the Board may revoke, or invoke other appropriate discipline against his license to
14 practice nursing, subject only to the requirement that the Board shall, prior to such disciplinary
15 action, conduct a hearing in accordance with the Nevada Nurse Practice Act for the limited
16 purpose of establishing that there has, in fact, been a violation of the stipulations of this
17 Agreement. In the event that a violation of the stipulations is alleged, Respondent agrees to
18 surrender his license to the Executive Director, or the Compliance Coordinator, if they so
19 request, and refrain from practicing nursing until entry of a final order of the Board or a court of
20 competent jurisdiction, whichever last occurs, regarding a potential violation.

21 29. **REPORTING TO NATIONAL DISCIPLINARY DATA BANKS**

22 This Agreement will become part of the Respondent's permanent record, will become public
23 information, will be published with the list of disciplinary actions the Board has taken, and may
24 be reported to any national repository which records disciplinary action taken against licensees
25 or holders of certificates; or any agency or another state which regulates the practice of nursing.
26 The Agreement may be used in any subsequent hearings by the Board.

27 ///

1 30. TERMINATION OF PROBATION

2 Upon completion of the stipulations of this Agreement, Respondent shall apply for termination
3 of probation and issuance of unrestricted licensure on forms supplied by the Board. Respondent
4 shall meet with the Compliance Coordinator and/or the Disability Advisory Committee for
5 evaluation of compliance and recommendation for termination of probation. The probation shall
6 continue until terminated by the Board.

7 ///

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

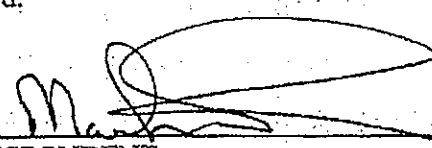
26

27

28

1 NEVADA STATE BOARD OF NURSING retains jurisdiction in this case until all
2 conditions have been met to the satisfaction of the Board.

3
4 Dated this 16 day of JULY, 2009


RESPONDENT
MARK BROWN

5
6 Witnessed by: C. Sanson, RN, BSN
7 7/16/09

8
9 State of Nevada

10 County of _____

11 This instrument was acknowledged before me on _____, 2009, by _____

12
13
14
15 Notary Public

16
17
18
19
20
21 Accepted and approved this 17th day of July, 2009

22
23 NEVADA STATE BOARD OF NURSING

24
25
26 By: Doreen K. Begley

Doreen Begley, MS, RN
Board President